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the evidence of one who was neither an intimate friend nor an owner diverted part of a stream to his farm, aided in keeping open the channel, and made valuable improvements on his land, which would have been practically valueless without the water. All this was known and acquiesced in by the riparian owners for a period of eight years. At the end of that time they sought to enjoin a further diversion of the stream by the licensee. It was held that they were equitably estopped from denying him that privilege.

EVIDENCE.

Evidence—Res Gestæ.—*Ray v. Isbell*, 29 Atl. Rep. 538 (Conn.). In an issue as to whether all the repairs on a house were done for a certain price or only a part for such sum, testimony of an agent may be received as to what he formed an estimate of price upon, being a part of transaction and tending to show the subject matter of the contract.

Forgery—Indictment—Evidence.—*People v. Smith*, 37 Pac. Rep. 516 (Cal.). An indictment for forgery was composed of two counts, one of which was bad, and the evidence upon which conviction was obtained applied equally to both. The presumption that the verdict was rendered upon the good count accordingly did not prevail, and the error of the *nisi prius* court in ruling in the defective count was held sufficient ground for reversal of judgment on appeal.

Parol Evidence to Vary Contract.—*Cohen et al. v. Jackboice*, 59 N. W. Rep. 665 (Mich.). The defendant gave plaintiffs a written order to insert an advertisement for twelve months, payable quarterly, and after six months paid half the year's subscription and ordered the advertisement to be discontinued. The court held on appeal that as the order contained all the *indiciæ* of a contract, except that it was not executed by both parties, it was such a valid written agreement as could not be affected by parol contemporaneous evidence.

Cancellation of Deed—Mental Incompetency—Opinion Evidence.—*Holland v. Zollner*, 36 Pac. Rep. 930 (Cal.). Where a question calls for a fact observed and not an opinion as to another's mental capacity it may be received in evidence. To say that a man acts rationally or irrationally is but to describe an outward manifestation drawn from observed facts. In this case it was decided that

expert witness, with reference to testator's conduct and conversation being irrational on certain occasions, was admissible.

SALES.

Sale—Action on Contract.—*Harber Bros. Co. v. Moffat Cycle Co.*, 37 N. E. Rep. 676 (Ill.). A vendor sold and delivered goods to his vendee and they were accepted by him although less were received, and at different times, than the contract called for, which was well known by the vendee. Having failed without cause to pay for the goods in accordance with the agreement, it was held that he could not maintain an action on the contract for the vendor's breach of it.

Rescission of Sale—Misrepresentations to Commercial Agency.—*Lowdon v. Fisk*, 27 S. W. Rep. 180 (Tex. App.). A vendor may rescind a sale, although he has relied on an investigation of a commercial agency as to the vendee's reputed financial standing, as well as on the vendee's false statement to such agency.

Contract—Rescission by Vendor—Recovery of Purchase Money.—*Patterson v. Murphy*, 60 N. W. Rep. 1 (Neb.). Under a written contract for the purchase of land by regular installments, it being provided in the contract that no recovery shall be had for money paid, in the event of rescission for non-performance; upon failure to make payment at the times stated and upon rescission by the vendor, the vendee cannot maintain an action for the recovery of such payments on the ground that by reason of the rescission of the contract, it must be treated as never having existed and consequently the forfeiture clause could not operate against the vendee, because on that view of the case the payments must be considered as purely voluntary and not recoverable. Nor can an action be based upon the contract, disregarding the forfeiture clause.

Death by Wrongful Act—Sale of Horse with Glanders.—*State to Use of Hartlove et al. v. Fox*, 29 Atl. Rep. 601 (Md.). Where the vendor of a horse fraudulently conceals the fact that it is afflicted with glanders, he is liable for the death of a person employed to care for the horse, on the ground, that, although the deceased was not a contracting party, the vendor who sells to an innocent vendee, property which he knows to be imminently dangerous to human life, may, under proper allegation and proof, be held responsible not only to the vendee, but to such persons as the vendee may naturally call upon to take charge of the property for him.